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February 5, 1999

Federal Communications Commission
Magalie Roman Salas, Secretary
1919 M Street, N.W.
Room 222
Washington D.C. 20054

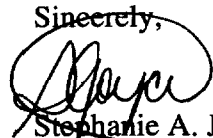
VIA HAND DELIVERY

Dear Ms. Salas:

Enclosed please find for filing one original and four (4) copies of International Telecard Association's Reply Comments in Common Carrier Docket 96-128. Also enclosed is one Receipt Copy to be returned.

All parties to this proceeding have been served via first class mail according to the attached service list.

Please do not hesitate to contact me with any questions.

Sincerely,

Stephanie A. Joyce

Enclosures

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Before the
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Washington, D.C. 20554

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FEB - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
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In the Matters of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Classification and Compensation Provisions)	
of the Telecommunications Act of 1996)	
)	
Requests by SBC, Southern New England)	NSD-L-98-147
Telephone, and GTE to Extend Waiver of)	
Coding Digit Requirements)	
)	
American Public Communications Council)	NSD-L-98-148
Motion for Deferral of the Effective Date of)	
the Payphone Order's Call Tracking)	
Verification Requirement)	

REPLY COMMENTS OF THE INTERNATIONAL TELECARD ASSOCIATION

The International Telecard Association ("ITA"), by its attorneys, submits these reply comments in the above-docketed proceedings in further support of the motion by the American Public Communications Council ("APCC") that the Commission defer enforcement of its payphone call verification rules for interexchange carriers ("IXCs").¹ ITA renews its opposition to local exchange carrier ("LEC") and payphone service provider ("PSP") petitions for additional waivers of coding digit requirements.² These parties' noncompliance with the coding digit rules necessitates that the Commission grant APCC's motion.

INTRODUCTION

The Commission must, as a matter of simple fairness, grant APCC's motion for deferral. The petitions for extension of waiver filed by GTE, SNET and SBC, which all parties agree

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Docket No. 96-128, Report and Order, 11 FCC Rcd. 20,541, 20,592 (1996) ("Payphone Order"). See also 47 C.F.R. § 64.1320.

should be dismissed with prejudice here,³ provide the strongest evidence that APCC's motion should be granted. These petitions represent two years of LEC and PSP intransigence in complying with the Commission's rule that these carriers provide real-time coding digits to IXC's for 800 and access code calls if they wish to receive compensation. Pursuant to the waivers and extensions of waivers that the LECs and PSPs have received, they have indeed continued to receive such compensation but have not provided IXC's with the requisite mechanism, that is, FLEX ANI codes, to verify the payphone calls for which IXC's must pay compensation. And more egregious, this failure by LECs and PSPs to transmit FLEX ANI codes prevents IXC's from complying with their own call tracking verification requirements for the Commission. Therefore, because the Commission has recognized that LECs and PSPs have not timely complied with FLEX ANI requirements, it must also recognize that enforcement of its call tracking verification requirements is at this time unwarranted.

I. ENFORCEMENT OF CALL TRACKING VERIFICATION PLACES AN UNFAIR BURDEN UPON IXC'S BECAUSE THEY CANNOT OBTAIN CODING DIGITS UNIVERSALLY

Although, as the Public Communications Industry Association ("PCIA") argues,⁴ IXC's are able to obtain FLEX ANI codes in many circumstances, requiring IXC's to submit auditable verification reports to the Commission places them in an untenable situation of "noncompliance by association." IXC's do not, and for some time will not, receive FLEX ANI codes from a

² *Payphone Order*, 11 FCC Rcd. at 20,591.

³ PCIA Comments at 2-3; AT&T Comments at 2; APCC Comments at 4. The Commission should therefore affirm its dismissal without prejudice in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Docket No. 96-128, Order, DA 98-2644 (rel. Dec. 31, 1998) ("*Dismissal Order*").

⁴ "Nowhere in its motion does APCC explain why the inability of a small number of payphones to transmit the proper coding digits – supplied by the LECs – should short-circuit the Commission's procedural check on proper implementation of the *Payphone Orders*." PCIA Comments at 3.

substantial number of payphones,⁵ as GTE, SNET and SBC admit in their own petitions for coding digit waivers. Thus, through no fault of their own, IXCs are unable to submit complete records of compensable payphone calls. To subject these records to regulatory scrutiny is therefore patently unfair.

PCIA's argument that "the filing of such verification reports will allow both PSPs *and the Commission* to determine the extent to which IXC tracking and payment activities comport with the Commission's rules"⁶ is interesting but not compelling. These call verification requirements are not merely an academic exercise but are enforceable obligations for IXCs. And though APCC recognizes that "[t]he verification procedure is important," its concern is that any IXC reports will not survive the Commission's review "to verify the accuracy of . . . per call tracking capabilities [.]"⁷ APCC does not demonstrate an unwillingness to assist the Commission to any degree. It is thus difficult to understand PCIA's vehement opposition to APCC's eminently reasonable request for deferral.

Further, PCIA's assertion that IXCs are enjoying an "illegal windfall" by collecting fees from end users for payphone-originated calls is unsubstantiated. IXCs have continued, pursuant to Commission order,⁸ to pay per-call compensation to PSPs. PCIA is obviously correct, however, that IXCs should not be collecting fees from end users if they are not in fact using those fees to compensate PSPs. The Commission has, in fact, provided for such a situation by establishing a true-up mechanism for ensuring that PSPs receive full compensation during this

⁵ APCC estimates that failure by even 0.5% of payphone (LEC petitions indicate that the number is far greater) affects approximately 2% of dial-around calls, which in turn represents 25% of all payphone traffic. APCC Comments at 12.

⁶ PCIA Comments at 3 (emphasis included).

⁷ *Id.* at 5.

⁸ See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Docket No. 96-128, DA 98-481, Memorandum Opinion and Order ¶ 4 (rel. Mar. 9, 1998).

transition period.⁹ It is therefore unnecessary for the Commission to address this situation again in the context of APCC's motion.

II. ALL PARTIES AGREE THAT THE COMMISSION SHOULD NOT GRANT FURTHER WAIVER OF CODING DIGIT RULES FOR NONCOMPLIANT LECs AND PSPs

Parties are unanimous that LECs and PSPs do not merit additional waiver of coding digit rules after two years' notice that compliance would be expected.¹⁰ As APCC succinctly states, "[e]nough is enough."¹¹ ITA has demonstrated to the Commission that PSP failure to transmit real-time FLEX ANI codes results in over \$60 million in lost revenue for prepaid card providers.¹² The Commission should not allow this situation to persist.

In fact, in the face of APCC's motion for deferral, the Commission should be even less inclined to grant further waivers as they are creating a chain reaction of noncompliance with the *Payphone Orders*. The "eleventh hour" petitions by GTE, SBC and SNET demonstrate a clear lack of good faith effort to comply with the coding digit rules;¹³ the subsequent submissions of "documentation" required by the Commission do little to cure this problem. The Commission thus can and should dismiss these petitions with prejudice in order to force LECs and PSPs to achieve compliance with coding digit requirements, thereby facilitating a smoother implementation of the Commission's payphone rules for all carriers.

⁹ *Id.*

¹⁰ PCIA Comments at 2-3; AT&T Comments at 2; APCC Comments at 4.

¹¹ APCC Comments at 4.

¹² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Application for Review at 3 (filed Apr. 8, 1998).

¹³ As found by the Commission in the *Dismissal Order* at ¶ H.

CONCLUSION

For these reasons, the Commission should dismiss with prejudice petitions by GTE, SNET and SBC for additional extension of coding digit waivers and grant APCC's motion.

Respectfully submitted,

By:



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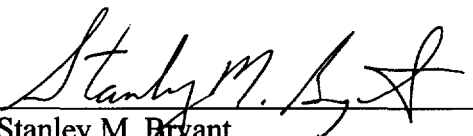
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Dated: February 5, 1999.

CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 5th day of February, 1999, that I have served a copy of the foregoing document via * messenger and U.S. mail, postage pre-paid, to the following parties listed below:


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